IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6649 of 1988

with

SPECIAL CIVIL APPLICATION No 5392 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6649 of 1988
MR PM THAKKAR for Petitioner No. 1-22
MR MR MENGDEY, AGP for Respondent No. 1-2

2. Special Civil Application No. 5392 of 1991
MR PM THAKKAR for Petitioner No. 1
MR MR MENGDEY, AGP for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 03/09/2002

ORAL JUDGEMENT

22 petitioners, who are working in different cadres ranging from the post of driver to the post of Deputy Mamlatdar in Class-III service of the State Government, have filed Special Civil Application No. 6649/1988 under Article 226 of the Constitution, and prayed to issue a writ of mandamus or any other appropriate writ or order to quash and set aside the Government of Gujarat, Finance Department Resolution No. BCR-1087-59/8, dated September 3, 1987, produced at Annexure-B to the petition, by which the Government decided to adopt a uniform system of flat rate of rent for different types of accommodation made available to the Government servants, instead of recovering rent on the basis of percentage of emoluments. The petitioners have also prayed to direct the respondents to recover the rent from the petitioners for Government accommodation allotted to them, on the basis of their respective emoluments. The petitioners have further prayed to direct the respondents not to recover rent from the petitioners for the accommodation allotted to them, on the basis of the revised rent, as per the Government Resolution dated September 3, 1987.

The sole petitioner in Special Civil Application No. 5392/1991 has filed the petition under Article 226 of the Constitution, and prayed to quash and set aside the Government Resolution dated September 3, 1987, which is referred to above, and to direct the respondents to recover the rent from him for the Government accommodation allotted to him, on the basis of his emoluments. Further, the said petitioner has also prayed to declare that the respondents-authorities have no power to implement the Resolution dated September 3, 1987 and recover the rent as described therein.

As common questions of facts and law arise for determination of the Court in these two petitions, the same are disposed of by this common judgment.

2. The petitioners in Special Civil Application No. 6649/1988 are working in different cadres ranging from the post of driver to the post of Deputy Mamlatdar in Class-III service of the State Government; whereas the petitioner in Special Civil Application No. 5392/1991 is serving as a drawing teacher in the Government Highschool, Botad. The petitioners have been allotted Government accommodation as per their respective status.

An employee of the State Government, who is allotted a residence, leased or requisitioned or owned by the Government, is required to pay rent as specified in Rule 849(b) of the Bombay Civil Service Rules, 1959. As per the unamended Rule 849(b) of the Bombay Civil Service Rules, 1959 as well as the Government Resolution, Finance Department No. VIB.176/2036/(75)/J, dated January 23, 1976, the rent recoverable from the employee, who was allotted Government accommodation, was standard rent as defined in Rule 846 of the Bombay Civil Service Rules, 1959 or 10% of the monthly emolument, whichever was less. However, by a Government Resolution, the Government had appointed a Committee to consider suitable formula for recovery of house rent from Government employees who are allotted Government accommodation. On the basis of recommendation made by the Government, the Government vide Resolution dated September 3, 1987 decided to adopt a uniform system of flat rate of rent for different types of accommodation, instead of the system of recovering percentage of rent on the basis of emolument. According to the petitioner, the Resolution is contrary to the provisions of Rule 849(b) of the Bombay Civil Service Rules and, therefore, bad in law. What is asserted by the petitioner is that the decision to charge flat rate of rent has been taken without affording any opportunity of being heard to the employees and as the same affects the financial interest of the employees adversely, the same is liable to be set aside. It is also mentioned that the decision to charge flat rate of rent is arbitrary because the Government accommodation located in different places of the State of Gujarat cannot be equated with each other and, therefore, the Resolution should be set aside. Under the circumstances, the petitioners have filed the above-referred to two petitions and claimed reliefs referred to earlier.

3. Mr. Vasantbhai Nagardas Patel, Under Secretary to the Government of Gujarat,Roads & Building Department, has filed common affidavit-in-reply controverting the averments made in the two petitions. What is mentioned in the affidavit-in-reply filed on behalf of the respondent no.2, is that Rules 846 and 849 have been suitably amended by the Government vide Notification of the Finance Department No. G.N.8.VLB-1089-467-J, dated March 4, 1989 with effect from August 1, 1987, which authorises the Government to charge flat rate of rent calculated in accordance with Rule 849(b) of the Bombay Civil Service Rules, 1959 and, therefore, the petition should be dismissed.

4. Heard the learned counsel for the parties. It is

true that prior to the amendment of Rule 849(b) of the Gujarat Civil Service Rules, 1959, a Government servant was liable to pay rent equivalent to 10% of his emolument for accommodation made available to him by the Government. However, the Bombay Civil Service Rules, 1959 have been amended by the Bombay Civil Service (Gujarat Amendment) Rules, 1989, which have come into force with effect from August 1, 1987. As per the amended Rules, an employee is liable to pay flat rate of rent for the type of accommodation occupied by him, as indicated in Rule 849(b)(i) of the Bombay Civil Service Rules, 1959. It is relevant to notice that validity of the amended Rules is not challenged by the petitioners. The respondents are charging rent as per the statutory rules, which are in force and, therefore, the action of the respondents in charging flat rate of rent from the petitioners cannot be regarded as arbitrary or illegal. Therefore, the contention that action of recovering rent at the flat rate is illegal, unauthorised and arbitrary, cannot be accepted and is hereby rejected. The plea that before charging flat rate of rent, the petitioners should have been heard, is stated to have been rejected. It is well settled that the principles of natural justice do not apply while enacting a statute. In Special Civil Application No. 6649/1988, an attempt is made in Paragraph 3.6 of the petition to demonstrate that more rent is being recovered from those who are serving as driver than the rent payable by a Senior Clerk. However, on scrutiny, it is found that the data furnished in the said paragraph is factually wrong and the petitioners are not entitled to any relief on the basis of the averments made in the said paragraph. Thus, I do not find any substance in any of the petitions and both the petitions are liable to be dismissed.

For the foregoing reasons, both the petitions fail and are dismissed. Rule is discharged in each petition, with no order as to costs. Ad-interim relief granted in both the petitions is hereby vacated.

(J.M.Panchal,J.)

(patel)